

Subchapter 17

Mortgage Broker and Loan Originator Licensing

2.59.1701 DEFINITIONS For purposes of the Montana Mortgage Broker and Loan Originator Licensing Act and this subchapter, the following definitions apply:

(1) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(2) "Employed by" means:

(a) an individual performing a service for a mortgage broker liable for withholding taxes pursuant to Title 26 of the United States Code; or

(b) any individual acting as an independent contractor for a mortgage broker if that individual is under exclusive written agreement to broker loans only through their sponsoring mortgage broker or if the sponsoring mortgage broker undertakes accountability for the regulated mortgage loan activities of the independent contractor.

(3) "Fraudulent or dishonest dealings" means financial misconduct prohibited by statutes governing:

(a) mortgage brokers in this and other states; and

(b) other segments of the financial services industry, including but not limited to:

(i) securities brokerages;

(ii) banks and trust companies;

(iii) escrow offices;

(iv) title insurance companies; or

(v) other licensed or chartered financial institutions.

(4) "Initiation of an investigation" means any administrative, civil, or criminal proceeding initiated by a state, municipal or federal governmental entity, the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Agency and such proceeding is evidenced by a written formal complaint or charge filed by the investigating agency.

(5) "Material change" means:

(a) a change in the nature of the business;

(b) a change in the board of directors or the principal officers;

(c) a change in the share ownership of the company that could affect control; or

(d) the acquisition or disposition of another company.

(6) "Mortgage broker entity" means corporation, limited liability corporation, partnership, limited liability partnership or any other organization other than a sole proprietorship.

(7) "Table funding" means the closing of a loan naming a mortgage broker, a mortgage broker's business entity or a loan originator as the lender on the mortgage loan note,

which note is then sold within three business days of closing to another party.

(8) "Work in a related field" means:

(a) for a mortgage broker, three years:

(i) as a mortgage broker, a branch office manager of a mortgage broker business;

(ii) as a mortgage banker, or responsible individual or branch manager of a mortgage banking business;

(iii) as a real estate loan officer;

(iv) as a branch manager of a real estate lender;

(v) as a loan originator; or

(vi) as a mortgage broker licensee in another state where the licensing standards are substantially similar to those in this state, as determined by the department; and

(b) for a loan originator, six months:

(i) as a loan originator in a mortgage broker business;

(ii) as a loan originator in a mortgage banking business;

(iii) as a real estate loan officer;

(iv) as a loan originator licensee in another state where the licensing standards are substantially similar to those in this state, as determined by the department;

(v) as a real estate loan processor;

(vi) as a residential real estate loan closing agent;

or

(vii) other work or educational experience as approved by the department. (History: [32-9-130](#), MCA; [IMP](#), [32-9-103](#), [32-9-109](#), [32-9-115](#), [32-9-116](#), [32-9-117](#), [32-9-123](#), MCA; [NEW](#), 2004 MAR p. 1133, Eff. 5/7/04; [AMD](#), 2005 MAR p. 320, Eff. 2/25/05.)

2.59.1702 PROOF OF EXPERIENCE (1) Satisfactory proof of experience may include but is not limited to:

(a) valid copies of W-2 or 1099 tax forms verifying employment;

(b) valid copies of form 1120 corporate tax returns signed by the broker or manager as owner of the business; or

(c) signed letters from a lender on the lender's letterhead verifying that the broker has competently originated loans for the required time period. (History: [32-9-130](#), MCA; [IMP](#), [32-9-109](#), MCA; [NEW](#), 2004 MAR p. 1133, Eff. 5/7/04.)

2.59.1703 TRANSFER OF LOAN ORIGINATOR LICENSE (1) To transfer a loan originator license, a loan originator shall obtain a relocation application from the department. The completed relocation application must be accompanied by a processing fee of \$50.

(a) If a license is not transferred within six months and has been canceled, a complete new application with all required information must be submitted along with the appropriate new application fees and supporting documentation.

(b) If the lapse in employment occurs over a renewal period, the loan originator license must be renewed as required by [32-9-117](#), MCA, to qualify for a transfer of the license. The relocation six-month time frame would remain in effect and would be from the date of termination.

(2) If a loan originator is terminated by a mortgage broker, and within six months is re-employed by the same mortgage broker, a request for reinstatement form must be filed with the department. The form will be available from the department. There will be a \$10 processing fee for reinstatement. If the break in employment occurs over a renewal period, the loan originator license must be renewed as required by [32-9-117](#), MCA, to qualify for reinstatement. The six-month time frame would remain in effect and would be from the date of termination. (History: [32-9-130](#), MCA; [IMP](#), [32-9-116](#), MCA; [NEW](#), 2004 MAR p. 1133, Eff. 5/7/04.)

2.59.1704 LICENSE RENEWAL (1) The renewal fees shall be \$50 for mortgage broker entities that are not sole proprietorships, \$300 for individual mortgage brokers and sole proprietors and \$250 for loan originators. The renewal application forms will be sent by the department to each licensed mortgage broker or loan originator in April. The application must be postmarked or received by May 31.

(2) The continuing education year will be from June 1 to May 31.

(3) No more than six hours of continuing education credits may be carried over to the next licensing year.

(4) The renewal application must be accompanied by evidence that the continuing education requirement has been met and a recent credit report from one of the three recognized credit reporting agencies. They are Experian, Equifax, and Transunion.

(5) Mortgage brokers must include evidence of an irrevocable letter of credit or surety bond.

(6) Mortgage brokers or loan originators shall continuously satisfy all requirements of initial licensure to be eligible for renewal. A renewal application may not be processed or granted until all required information is received.

(7) Failure to renew licenses by May 31 but before July 1 will result in a \$250 late fee per license in addition to regular renewal fees.

(8) If the attempt to renew is after June 30, the license is considered expired. Expiration terminates the right to engage in any residential mortgage broker or loan originator activities. The mortgage broker or loan originator must then apply as a new licensee.

(9) The department will not accept applications for original licensure of mortgage brokers or loan originators in the months of May and June because of the volume of license renewals during those months. (History: [32-9-130](#), MCA; [IMP](#), [32-9-117](#), [32-9-118](#), [32-9-123](#), MCA; [NEW](#), 2004 MAR p. 1133, Eff. 5/7/04; [AMD](#), 2005 MAR p. 320, Eff. 2/25/05.)

2.59.1705 LICENSING EXAMINATION AND CONTINUING EDUCATION PROVIDER REQUIREMENTS (1) A licensee or applicant shall receive credit for participation in a program if it is presented by a provider approved by the department and the department has approved the program pursuant to this rule.

(2) To receive approval of a licensing examination or continuing education course, the examination or course provider must file an application with the department, which includes, but is not limited to the following items:

(a) a description of the examination or course provider's experience in teaching courses;

(b) a complete list of all examiners or instructors for the course, including their qualifications and experience with examinations and teaching courses similar to the course submitted for approval;

(c) a description of each examination or course; and

(d) all examination or course materials and lesson plans.

(3) Courses and licensing examinations must reflect the activities performed by prospective mortgage brokers and loan originators and must provide prospective mortgage brokers and loan originators with a basic knowledge of and competency in the following:

(a) basics of home purchase and ownership;

(b) the mortgage industry, generally;

(c) loan evaluation and documentation;

(d) features of various loan products;

(e) state and federally required disclosures;

(f) the Montana Residential Mortgage Broker and Loan Originator Licensing Act; and

(g) other state and federal laws applicable to the mortgage industry.

(4) Appropriate subjects for licensing examinations may include:

(a) the Montana Residential Mortgage Broker and Loan Originator Licensing Act;

(b) state and federal consumer protection acts;

(c) the federal Real Estate Settlement Procedures Act, Truth in Lending Act, Equal Credit Opportunity Act, Fair Credit Reporting Act, Fair Housing Act, Home Mortgage Disclosure Act, Community Reinvestment Act, and the regulations promulgated pursuant to these acts;

(d) trust account and recordkeeping requirements of the Montana Residential Mortgage Broker and Loan Originator Licensing Act;

(e) real estate and appraisal law;

(f) arithmetical computation common to mortgage lending, including but not limited to:

(i) the computation of an annual percentage rate;

(ii) finance charges;

(iii) amount financed;

(iv) payment and amortization;

(v) credit evaluation; and

(vi) calculating debt-to-income; and

(g) ethics in the mortgage industry.

(5) The provider shall file an application with the department which includes a copy of examinations to be used, if any, in determining satisfactory comprehension of the contents of the course and the grading scale to be used. Any new or revised courses, examinations or grading scales to be used shall be submitted to the department for approval at least 30 days prior to use. Course materials may be submitted in electronic format. The department will consider examinations and continuing education disseminated by written or electronic means, including by the internet.

(6) The department shall review applications filed and determine whether to approve or deny the proposed provider. If the department approves the course or provider, the department shall issue a certificate of approval that will be effective for two years from the date of issuance.

(7) The department shall provide a list of approved providers. The list shall indicate whether a provider is approved to present licensing examination and/or continuing education programs.

(8) A course provider that desires to renew the certificate of approval must apply to the department and file the items required in (2) no later than 60 days before the certificate expires.

(9) The department may audit an approved course or examination at any time. If the course provider or examination administrator has not complied with the requirements of this rule, the department may suspend or terminate the approval and require the surrender of the certificate of approval.

(10) The department may revoke, suspend or terminate approval of any provider or individual course upon a finding that:

(a) any provider officer or employee who has obtained or used, or has attempted to obtain or use, in any manner or form, the examination questions for any purpose other than instruction;

(b) during any six-month period, fewer than 50% of the provider's program students taking the examination for the first time achieve a passing score; or

(c) the provider has not conducted at least one continuing education program during the preceding 24-month period.

(11) A provider shall designate one person as its contact person who shall be available to the department during ordinary business hours and shall be knowledgeable and have authority to act with regard to all administrative matters concerning instructors, scheduling, advertising, recordkeeping, and supervising all programs offered by the provider.

(12) Providers shall not use any words, symbols or other means to indicate that either the provider or a

program has received the department's approval unless such approval has been issued and remains in effect.

(13) The fee for review of an initial and biennial education provider application is \$100 for the application fee and \$50 for each approved continuing education credit hour. All fees are nonrefundable and must be submitted with the application.

(14) An education course relative to commercial lending or commercial loan brokering may not be used to satisfy continuing education requirements under this subchapter.

(15) An education provider shall maintain student records for three years. (History: 32-9-130, MCA; IMP, 32-9-110, 32-9-118, MCA; NEW, 2004 MAR p. 1133, Eff. 5/7/04; AMD, 2006 MAR p. 2104, Eff. 9/8/06.)

2.59.1706 IRREVOCABLE LETTER OF CREDIT OR SURETY BOND

(1) If using an irrevocable letter of credit, the letter of credit shall be from a financial institution acceptable to the department. The entity name on the application and on the irrevocable letter of credit must match exactly.

(2) If using a surety bond, the bond shall be issued by a surety authorized to do business in the state of Montana. The bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be placed on file with the department. The entity name on the application and on the surety bond must match exactly. The bond shall be continuous and may be cancelled by the surety upon the surety giving 30 days written notice to the department of its intent to cancel the bond. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond.

(3) The department or any person injured by a violation of this act may bring an action in a court of competent jurisdiction against the surety bond or approved alternative of the licensed mortgage broker who committed the violation or who employed or engaged the loan originator who committed the violation.

(a) An action against an irrevocable letter of credit must be commenced within one year after the expiration date of the relevant letter of credit or one year after the cause of action accrues, whichever occurs later. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

(b) In the event valid claims of borrowers and bona fide third parties against a bond or irrevocable letter of credit exceed the amount of the bond or deposit, each claimant shall only be entitled to a pro rata amount, based on the amount of the claim as it is valid against the bond

or irrevocable letter of credit, without regard to the date of filing of any claim or action.

(c) A judgment arising from a violation of the Montana Mortgage Broker and Loan Originator Licensing Act or a rule adopted under that act shall be entered for actual damages and in no case be less than the amount paid by the borrower to the licensed mortgage broker plus reasonable attorneys' fees and costs. In no event shall the surety bond or approved alternative provide payment for any trebled or punitive damages.

(d) Borrowers and bona fide third parties shall be given priority over the department and other persons in distributions in actions against the surety bond. The remedies provided under this rule are cumulative and nonexclusive and do not affect any other remedy available at law. (History: [32-9-130](#), MCA; [IMP](#), [32-9-123](#), MCA; [NEW](#), 2004 MAR p. 1133, Eff. 5/7/04.)

2.59.1707 REVOCATION, SUSPENSION, OR SURRENDER OF LICENSE (1) A licensee may surrender a license by delivering to the department written notice of surrender, but a surrender does not affect the licensee's civil or criminal liability for acts committed before the surrender.

(2) A revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a borrower.

(3) In the event of a revoked, suspended, or surrendered mortgage broker or loan originator license, no fees will be refunded by the department. (History: [32-9-130](#), MCA; [IMP](#), [32-9-126](#), MCA; [NEW](#), 2004 MAR p. 1133, Eff. 5/7/04.)

2.59.1708 TABLE FUNDING REQUIRES LICENSURE (1) Any person not exempted from the Montana Mortgage Broker and Loan Originator Licensing Act under [32-9-104](#), MCA, who closes a mortgage loan naming themselves as the lender and who, within three days of closing, consummates sale of the mortgage loan note to another party, commonly known as "table funding" as defined in ARM [2.59.1701](#), must be licensed as a mortgage broker or loan originator. (History: [32-9-130](#), MCA; [IMP](#), [32-9-103](#), [32-9-108](#), MCA; [NEW](#), 2004 MAR p. 1133, Eff. 5/7/04.)

2.59.1709 CONSUMER COMPLAINT PROCESS (1) A complaint form will be provided by the department. A complaint must be submitted in writing to the department. If the basis of the complaint relates to the Montana Mortgage Broker and Loan Originator Licensing Act, it will be investigated by the department or designated party. (History: [32-9-130](#), MCA; [IMP](#), [32-9-130](#), MCA; [NEW](#), 2004 MAR p. 1133, Eff. 5/7/04.)

2.59.1710 RECORDS TO BE MAINTAINED (1) A mortgage broker shall create and retain a residential mortgage file. The residential mortgage file shall contain:

(a) a record of all cash, checks, or other monetary instruments received in connection with each mortgage loan application showing the identity of the payor, date received, amount, and purpose;

(b) applicant's name, date, name of person taking the application, HUD-1 Settlement Statement, copies of all agreements or contracts with the applicant, including any commitment and lock-in agreements, and all disclosures required by state and federal law signed by the borrower;

(c) a record of any and all contact between the mortgage broker or loan originator and the borrower relating to the rate, terms, or conditions of the loan;

(d) a copy of the evidence of insurance or insurance binder as required by the lender;

(e) a copy of the statement from the investor authorizing the loan;

(f) a copy of the appraisal;

(g) a copy of the borrower's credit report;

(h) a copy of all documentation used to support the borrower's income as required by the lender;

(i) a copy of all documentation used to support the borrower's assets as required by the lender;

(j) a copy of the promissory note;

(k) a copy of the policy of title insurance commitment on the property securing the loan; and

(l) a copy of the first three pages of the deed of trust and final Truth in Lending disclosure signed by the borrower.

(2) A mortgage broker shall maintain a trust account records file showing a sequential listing of checks written for each bank account relating to the licensee's business as a mortgage broker, showing at a minimum, check number, the payee, amount, date, and purpose of payment, including identification of the loan to which it relates, if any. The licensee shall reconcile the bank accounts monthly. (History: 32-9-130, MCA; IMP, 32-9-121, 32-9-124, 32-9-125, MCA; NEW, 2006 MAR p. 2104, Eff. 9/8/06.)